HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.123 of 2007

Between:

Sri Komirisetti Yadaiah

... Appellant

And

The Deputy Collector &
Mandal Revenue Officer,
Hayatnagar Mandal, R.R. District

... Respondent

::JUDGMENT::

Counsel for the appellant : Shri P. Thirumala Rao

Counsel for the respondent : Government Pleader for Revenue

February 08, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 2-1-2007 passed by the learned Single Judge, whereby he disposed of the writ petition filed by the appellant questioning the legality of proceedings dated 19-6-2006 issued by Deputy Collector and Mandal Revenue Officer, Hayathnagar Mandal, Ranga Reddy District (the respondent herein) by relegating the appellant to the alternative remedy of appeal under Section 4A of

the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the Act').

Although the appeal has been listed for admission hearing, with the consent of the learned counsel for the parties, we have heard arguments on the merits of the case and are finally deciding the appeal.

In the affidavit filed by him in support of the writ petition, the appellant averred that land measuring 27 guntas comprised in Survey No. 10/34 situated at Batasingaram Village, Hayathnagar Mandal, Ranga Reddy District was assigned to his father late Komerisetti Lingaiah in the year 1969; that after the death of his father, the petitioner (the appellant herein) was in possession and enjoyment of the same; that patta certificate and pattedar pass book were issued in his favour; that the assignment was cancelled by the non-petitioner (the respondent herein) vide his order dated 19-6-2006 without giving notice and opportunity of hearing and that the order cancelling the assignment was not served on him. The appellant further averred that after obtaining the copy of order from the Panchayat Secretary on 12-12-2006, he was seeking intervention of the Court for nullification of the same on the ground of violation of the provisions contained in the Act and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 as also the principles of natural justice. In paragraphs 3 and 4 of his affidavit (paragraph 4 is

wrongly mentioned as 5), the appellant has averred as under:

> " 3. The petitioner submits that the respondent along with other officials came to the petitioners' lands in the 1st week of December, 2006 and told that the lands belonged to the Government and that the petitioner has to vacate the same immediately. The respondent did not issue any notice to the petitioner nor made any enquiries in respect of their claim. Since there was standing crop on the lands the petitioner along with other locals resisted the highhanded and illegal attempts of the respondent. The petitioner upon advice immediately made enquiries as to object and purport of the respondent's claim. The petitioner was shocked to know that the assignment pattas granted in favour of his father Late Lingaiah has been cancelled and that resumption orders have been passed in respect of the lands. After persuading several officials, the petitioner was supplied with the copy of the order in Progs. No.C/878/2005 DT:19.06.2006 by the Panchayat Secretary on 12.12.2006.
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> 4. It is submitted that on receipt of the copy the petitioner came to know that the assignment patta granted to his father Late Lingaiah has been cancelled and that the resumption order was passed on 19.06.2006 and that Form I notice was affixed on the office of the Gram Panchayat. The petitioner has not been given any notice of the proceedings and has not been provided with an opportunity to participate in the enquiry which is discernibly evident from the impugned order. It has been

> alleged and assumed by the authorities that the usage/nature of the land has been changed into non agriculture and has been further converted into plots and sold away to others. The petitioner categorically denies the said allegation and submits that the petitioner is cultivating the lands even as on today. The petitioner as well as his forefathers have been permanent residents of Batasingaram village and are well known among the locals of the village despite which the respondent officials malafidely and deliberately did not serve the notice upon him instead affixed the same on the office of the Gram Panchayat and conducted the entire proceedings behind his back. The respondent's action smacks of perversity and malice.

The learned Single Judge did not issue formal notice to the respondent requiring him to file counter affidavit to admit or controvert the assertions contained in the affidavit of the appellant and disposed of the writ petition on the basis of oral assertion made by the learned Government Pleader that the assignment was cancelled after issuing notice, which was affixed on the notice board of the Gram Panchayat of Batasingaram Village. The learned Single Judge also observed that the writ petitioner can avail the remedy of appeal against the order of cancellation and there was no justification to entertain the grievance made by him in the writ petition.

In our opinion, keeping in view the uncontroverted averments contained in the affidavit of

the appellant, the learned Single Judge ought not to have disposed of the writ petition by relegating the appellant to the alternative remedy of appeal. There cannot be any doubt that cancellation of the assignment after a gap of 38 years seriously affected the appellant's right to property. Therefore, before ordering resumption, the competent authority was duty bound to comply with the statutory provisions and the rules of natural justice. In the affidavit filed by him, the appellant had categorically averred that he was not given any notice of the proceedings initiated by the respondent for cancellation of the assignment. This assertion remained uncontroverted because, as mentioned above, the respondent did not get opportunity to file counter affidavit. In the absence of a specific counter, the observation made by the learned Single Judge that a serious disputed question of fact arises for determination by the Court and for that purpose, the proceedings under Article 226 were not proper cannot but be termed as erroneous. If the appellant's version regarding non-service of notice and denial of opportunity of hearing is correct, then he cannot be asked to avail the alternative remedy of appeal, because it is settled law that the rule of alternative remedy is not applicable to the cases in which the petitioner comes up with the complaint that he has been deprived of his legal or constitutional right without being heard – **Baburam v. Zilla Parishad**[1] and **Harbanslal Sahnia v. Indian Oil**

Corporation Ltd[2].

For the reasons mentioned above, the appeal is allowed. The order of the learned Single Judge is set aside and the writ petition is admitted for hearing.

At this stage, learned Government Pleader for Revenue submitted that the writ petition may be disposed of by setting aside order dated 19-6-2006 with liberty to the respondent to pass fresh order after complying with the provisions of the Act and the rules of natural justice.

In our opinion, the submission made by the learned Government Pleader is most reasonable and merits acceptance. Hence, instead of remanding the case to the learned Single Judge for fresh adjudication, we deem it proper to set aside order dated 19-6-2006 passed by the respondent with liberty to pass fresh order after giving notice and opportunity of hearing to the appellant. Ordered accordingly.

As a sequel to disposal of the appeal, WAMP No. 207 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 08, 2007
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[1] AIR 1969 SC 556
[2] (2003) 2 SCC 107